The power to order a transfer of a case to the High Court direct, without a preliminary inquiry, has very rarely been exercised and, in the only case in the post-war era in which it has been so exercised, both the prosecution and the defence were agreed that the High Court should try it – although there was disagreement between them about the right to a preliminary inquiry which the Court decided did not exist in the case of a trial without jury. That case moreover proceeded on the common ground that a fair and impartial trial could not be had before the District Courts. This case does not.

The prosecution have power under section 177 to apply for the case to be sent for a preliminary inquiry with a view to committal to the High Court. Perhaps the Attorney-General would like to consider whether he wishes to exercise his powers under this section.

Another matter on which I feel obliged to comment is the fact that section 176 requires an application to be supported by an affidavit except where the applicant is the Attorney-General or the Solicitor-General. Without disrespect to the learned Senior State Counsel whose experience is wide and whose assurances from the Bar a Court would be slow to refuse to accept I think that section 176 contemplates an application by the Attorney-General or the Solicitor-General in person. Otherwise the section would have mentioned the Public Prosecutor or a Deputy Public Prosecutor.

I would accordingly make no order on this Motion.

Order accordingly.

LEE SOON BENG v. WEE TIAM SING

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Thean JJ.) July 29, 1986]

[Singapore – Civil Appeal No. 67 of 1985]

Damages – Award of interest on damages – Principles followed – Civil Law Act (Cap. 30), s. 9.

The main issue before the High Court was whether interest should be awarded on a sum of $30,000 which was the agreed sum as damages for pain and suffering and on a sum of $16,250 which was the agreed sum for special damages. Chua J. acknowledged the fact that the Court's power to award interest on damages was discretionary but the learned Judge refused to do so following Choor Singh J.'s decision in *Ban Pet Hock* v. *Ong Ah Ho*.(1) The appellant appealed against that decision.

Held, allowing the appeal: (1) the High Court failed to exercise its discretion judicially by failing to consider the facts and circumstances of the case and the principles which should be applied when considering whether or not interest should be awarded in personal injury cases;

(2) it is now generally accepted since *Jefford* v. *Gee*(2) that the principles that should be applied in awarding interest in personal injury cases are that interest should not be awarded as compensation for the damage done but should only be awarded to a plaintiff for being kept out of money which ought to have been paid to him, but was not;

(3) the judgment of the High Court should be varied so as to allow for interest on the special damages of $16,250 at 6% per annum from December 8, 1981 (the date when the Writ was issued) to the date of trial and on the general damages of $30,000 at 6% per annum from September 27, 1982 (the date when the defence was filed) to the date of trial.

[*Editorial Note*: The Court of Appeal in Singapore had, for the first time departed from its usual stand. Previously the Singapore courts had always followed the decision of Choor Singh J. in *Ban Pet Hock* v. *Ong Ah Ho*.(1)]

Cases referred to:

(1) *Ban Pet Hock* v. *Ong Ah Ho* [1966] 2 M.L.J. 253.
(2) *Jefford* v. *Gee* [1970] 1 All E.R. 1202.
(3) *London, Chatham and Dover Railway Co.* v. *South Eastern Railway* [1893] A.C. 429, 437.
(4) *Harbutts "Plasticine" Ltd.* v. *Wayne Tank and Pump Co. Ltd.* [1970] 2 W.L.R. 198, 212.

COURT OF APPEAL.

Karuppan Chettiar for the appellant.

M. Karthigesu (*Ms Anne Loke* with him) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the Judgment of the Court): This is an appeal against the judgment of Chua J. in an action by the appellant for damages for personal injuries caused by the negligence of the respondent in the driving, use and management of motor vehicle No. AU 203 J on September 17, 1979.

The respondent at the date of the trial admitted liability and on that admission a consent judgment for the appellant was granted by Chua J. in the sum of $65,000.00 and costs. As the parties could not agree on the question of interest, the learned judge was asked to decide whether interest should be awarded on a sum of $30,000 which was

the agreed sum as damages for pain and suffering and on a sum of $16,250 which was the agreed sum for special damages. After hearing counsel Chua J. declined to award interest in respect of both these agreed sums.

In his grounds of judgment Chua J. said:–

"I held that on principle no interest should be awarded on damages in running-down cases.

Section 9 of the Civil Law Act (Cap. 30) empowers the Court to award interest on damages. The power is discretionary.

In *Ban Pet Hock* v. *Ong Ah Ho*,[1] Choor Singh J. held that on principle interest should not be allowed when damages are awarded in running-down cases. I respectfully agree with Choor Singh J."

The power of the court to award interest in personal injury cases is contained in section 9 of the Civil Law Act (Cap. 30) which reads as follows:

"9. In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in this section –

(a) shall authorize the giving of interest upon interest; or"

As Chua J. recognised, the power of the court is discretionary but, in our judgment, he failed to exercise his discretion judicially by failing to consider the facts and circumstances of the case and the principles which should be applied when considering whether or not interest should be awarded in personal injury cases. We think it is now generally accepted since *Jefford* v. *Gee*[2] that the principles that should be applied in awarding interest in personal injury cases are that interest should not be awarded as compensation for the damage done but should only be awarded to a plaintiff for being kept out of money which ought to have been paid to him, but was not.

Just over a century ago Lord Herschell in *London, Chatham and Dover Railway Co.* v. *South Eastern Railway*[3] stated the general principle in these words:–

"... I think that when money is owing from one party to another and that other is driven to have recourse to legal proceedings in order to recover the amount due to him, the party who is wrongfully withholding the money from the other ought not in justice to benefit by having that money in his possession and enjoying the use of it, when the money ought to be in the possession of the other party who is entitled to its use. Therefore if I could see my way to do so, I should certainly be disposed to give the appellants, or anybody in a similar position, interest upon the amount withheld from the time of action brought at all events."

After the passing of the English Law Reform (Miscellaneous Provisions) Act 1934, section 3(1) of which gave power to the courts in England to award interest on debts and damages – which section is *in pari materia* with section 9 of our Civil Law Act – the English Court of Appeal applied this principle in *Harbutts "Plasticine" Ltd.* v. *Wayne Tank and Pump Co. Ltd.*[4] where it said:–

"... the basis of an award of interest is that the defendant has kept the plaintiff out of his money; and the defendant had the use of it himself. So he ought to compensate the plaintiff accordingly."

The agreed sum of $30,000 general damages

This was the agreed sum for pain and suffering by the appellant. The admission of liability by the respondent meant that he should have admitted the appellant's claim when it was made and should have paid the appropriate sum for damages. In *Jefford* v. *Gee* (*supra*), Lord Denning M.R. who delivered the judgment of the Court of Appeal at page 1209 said:–

"Pain and suffering and loss of amenities

When the compensation payable to a plaintiff is not for actual pecuniary loss but for continuing intangible misfortune, such as pain and suffering and loss of amenities (which cannot fairly be measured in terms of money), then he should be awarded interest on the compensation payable. But such interest should not run from the date of the accident, for the simple reason that these misfortunes do not occur at that moment, but are spread indefinitely into the future and cannot possibly be quantified at that moment, but must of necessity be quantified later. It is not possible to split those misfortunes into two parts; those occurring before the trial and those after it. The court always awards compensation for them in one lump which is by its nature indivisible. Interest should be awarded on this lump sum as from the time when a defendant ought to have paid it, but did not: for it is only from that time that a plaintiff can be said to have been kept out of the money. This time might in some cases be taken to be the date of letter before action, but at the latest it should be the date when the writ was served. In the words of Lord Herschell L.C., interest should be awarded from the time of action brought at all events. From that time onwards it can properly be said that a plaintiff has been out of the whole sum and a defendant has had the benefit of it. Speaking generally, therefore we think that interest on this item (pain and suffering and loss of amenities) should run from the date of service of the writ to the date of trial."

In the present case the writ was issued on December 8, 1981 but there is no evidence before the court as to when it was served on the respondent. The Defence was filed on September 27, 1982 and in those circumstances we are of the opinion that interest should run for the period from September 27, 1982 to the date of trial. That leaves the rate of interest to be considered and in line with the rate of 6% per annum awarded by our courts over the years which we think is a realistic rate, we are of the opinion that the interest rate should be 6%.

The Agreed Sum of $16,250 Special Damages

On the principle that a plaintiff should be awarded interest on the sum which represents the actual pecuniary loss suffered by him from the date it was incurred to the date of trial because of the wrongful act of a defendant and which ought to have been paid to him but was not, we are of the opinion that the appellant should be awarded interest at 6% per annum from the date of the issue of the writ, December 8, 1981 to the date of trial.

Accordingly, the appeal should be allowed and the judgment of Chua J. varied so as to allow for interest on the special damages of $16,250/– at 6% per annum from December 8, 1981 to the date of trial and on the general damages of $30,000 at 6% per annum from September 27, 1982 to the date of trial.

Appeal allowed.

Solicitors: *Murphy & Dunbar; Cooma, Lau & Loh & M. Karthigesu.*

BANK OF INDIA v. TRANS CONTINENTAL COMMODITY MERCHANTS LTD. & ANOR.

[O.C.J. (Abdul Wahab Ghows J.) March 24, 1986]

[Singapore – Originating Summons No. 765 of 1983]

Reciprocal Enforcement of Judgments – Judgment and order obtained in England – Registration in Singapore – Application to set aside registration – Allegation of illegality – Whether just and convenient to enforce judgment – Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 24), s. 3 – R.S.C. 1970, O.67, r.9.

Commodities Trading – Foreign exchange – Commonwealth judgment – Registration in Singapore – Application to set aside.

In this case, the judgment creditors, the Bank of India, an Indian bank with a branch in the city of London, carried on the business of an international bank, including the handling of documentary credits and the provision of finance for exports. The first judgment debtors, Trans Continental Commodity Merchants Ltd. ("TCCM") traded in edible oils and other commodities and sought banking facilities in London with the bank. When TCCM became a customer of the bank, J. N. Patel, the second judgment debtor, executed a guarantee dated March 13, 1975, in respect of TCCM's liabilities to the bank. Thereafter the bank handled some 30 foreign exchange transactions, 12 of which were not satisfactorily performed by TCCM, as they failed to deliver the dollars to the bank on the due dates. The bank sued TCCM and Patel, claiming damages from TCCM for breach of contract and claiming a total of £186,000 from Patel under his guarantee. In the result the bank obtained judgment against TCCM for damages to be assessed. Bingham J. held Patel liable under the guarantee which had been "deliberately drawn in the widest possible language so as to cover any liability of the Company to the Bank." The English Court of Appeal dismissed Patel's appeal.

Patel applied by originating summons to the Singapore High Court to set aside the registration under the Reciprocal Enforcement of Commonwealth Judgments Act (Chapter 24) of a judgment of the High Court of Justice, Queen's Bench Division, dated October 22, 1981, and an order of the Court of Appeal dated May 24, 1983. He contended that the said judgment and the cause of action on which it was given and the agreement or agreements from which the cause of action arose were an infringement of section 2(b) of Article VIII of the Bretton Woods Agreement and were also infringements of sections 4(2), 9(1) and 36(1) of the Malaysian Exchange Control Act, 1953. Registration of the said judgment was tantamount to enforcing a judgment rooted in illegality.

Held, dismissing the application with costs: (1) the Court cannot give judgment on contentious questions of fact which had not been raised in the courts in London;

(2) if Patel had in fact created TCCM for the purpose of circumventing the Bretton Woods Agreement and the Malaysian Exchange Control Act, he must not be allowed to profit from his own wrongdoing at the expense of an innocent party;

(3) it is just and convenient that the judgment of the High Court of Judicature, Queen's Bench Division, dated October 22, 1981, and the order of the Court of Appeal dated May 24, 1983, should be enforced in Singapore.

[*Editorial Note:* The appeal by J.N. Patel, the 2nd judgment debtor was dismissed by the Court of Appeal on September 1, 1986.]

Cases referred to:

(1) *Sharif* v. *Azad* [1967] 1 Q.B. 605.
(2) *United City Merchants (Investments) Ltd.* v. *Royal Bank of Canada* [1983] 1 A.C. 168.
(3) *Batra* v. *Ebrahim* [1982] 2 Lloyd's Rep. 11.
(4) *Ralli* v. *Angullia* (1917) 15 S.S.L.R. 33.
(5) *Lam Soon Cannery & Co.* v. *Hooper & Co.* [1966] 1 M.L.J. 198.
(6) *Connolly* v. *Consumers Cordage Co.* 89 L.T. 347.